

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNITED SERVICES AUTOMOBILE ASSOCIATION,
Petitioner,

v.

AUTO TELEMATICS LTD.,
Patent Owner

IPR2023-00768
Patent 10,192,369 B2

Held Virtually: August 06, 2024

Before GEORGE R. HOSKINS, FRANCES L. IPPOLITO, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

IPR2023-00768
Patent 10,192,369 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on August 6, 2024,
commencing at 1:00 p.m., via video teleconference.

P R O C E E D I N G S

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JUDGE IPPOLITO: Good afternoon and welcome to the Board. This is a hearing for IPR2023-00768. I'm Judge Ippolito and I'm joined by fellow panel members, Judges O'Hanlon, and Hoskins. Let's begin with appearances from counsel. Counsel for Petitioner, please go ahead.

MR. PATRICK: Thank you, Your Honor. This is Andrew Patrick on behalf of Petitioner USA and I'm joined in the room by my colleagues, Karl Renner, Ryan Chowdhury and Charlene Thrower.

JUDGE IPPOLITO: Welcome. And counsel for Patent Owner. Are you here as well?

MR. TILLER: I am, Your Honor. I'm Steve Tiller on behalf of Patent Owner and with me are my colleagues, Lissi Mojica, Lisa Schreihart, and Greg Stone.

JUDGE IPPOLITO: Thank you for being here. As set forth in the trial hearing order, each side has up to 60 minutes of argument time. Petitioner bears the burden of showing unpatentability and will argue their case first and may reserve rebuttal time. Patent Owner, then you will go next with your opposition to Petitioner's case and you may also reserve sur-rebuttal time. And at that point, we'll have a short break about five to seven minutes and then Petitioner you will be able to argue any rebuttal and that will be followed by Patent Owner's rebuttal as well.

Before we begin, I'd like to mention a couple of housekeeping items. If at any time you're experiencing technical difficulties and you'd like to let us know, just contact us immediately if it's a technical issue that we can help you with or you just need a moment. The panel has the entire

1 record before us, including the demonstratives. So, when you're referring to
2 a particular slide, we have them, but it's helpful to identify it clearly in the
3 record which slide number you're on. And if you're going to refer to other
4 parts of the record, please provide the paper number or the exhibit number
5 and where you're referring to. We will be keeping account of your argument
6 time, but as you see we don't have a clock on display, so I will endeavor to
7 provide you with reminders, but you'll have to also keep track of your own
8 time.

9 And finally, when you're not speaking, please place yourself on
10 mute. And with all that said, Petitioner, would you like to reserve time for
11 rebuttal?

12 MR. PATRICK: Thank you, Your Honor. We would like to
13 reserve 20 minutes for rebuttal.

14 JUDGE IPPOLITO: Okay. Great. I'm just setting up the clock
15 here, and Petitioner, you may begin when ready.

16 MR. PATRICK: Thank you, Your Honors, and may it please the
17 Board. My name is Andrew Patrick, and I represent Petitioner USAA. I'm
18 joined by my colleagues Karl Renner, Ryan Chowdhury, and Charlene
19 Thrower, and Ryan and I plan to divide today's presentation between us.
20 More specifically, and if you'll turn with me to slide 3 of our demonstratives,
21 Ryan intends to explore with you the manner in which the proposed
22 combination of Curry, Rabu, and Katayama renders obvious the independent
23 claims. And in doing so, we'll particularly focus on limitations concerning
24 the local processing and storage of sensor data and derived driving
25 information by Curry's mobile device, as it would have been further

1 enhanced by the teachings of each of Rabu and Katayama. Before reaching
2 that part of our presentation, however, I'd like to spend some time with you
3 discussing in more detail the contents of each of those three references and
4 their combination as proposed in the petition and in Dr. Michalson's
5 accompanying testimony. We believe this will be helpful both because
6 Patent Owner's attempt to distinguish the combination from the claims relies
7 on what we believe to be unduly narrow reads of the references, and because
8 we believe that a person of skill reading Curry, Rabu, and Katayama fairly
9 would have been motivated to combine the teachings of those references to
10 enhance Curry in various ways and would have reasonably expected success
11 in doing so.

12 With that, I would like to ask you to turn with me to slide 10,
13 which depicts at right, Curry's Figure 1. As shown in that figure, Curry's
14 mobile phone client processes acceleration, location, and speed data
15 provided by embedded sensors, including an accelerometer to derive
16 information about whether and how a vehicle is being driven, and then
17 further leverages that driving information, both for purposes of real-time
18 dynamic call handling aimed at preventing unsafe driving behaviors, and for
19 purposes of uploading driving safety performance data to a driving safety
20 data server with which the mobile phone shares wireless communication
21 links. In more detail, and as shown in the upper left in the clip from Dr.
22 Michalson's declaration, raw data and derived driving behavior information
23 is stored in mobile phone 106. For example, an motion data cache 118 and a
24 driving safety performance database 324. And mobile client 110 processes
25 stored information both to determine a mode within which the mobile phone

1 should operate and to generate a driving safety score for the user that could
2 be wirelessly communicated to third parties.

3 Turning to slide 11, we see reproduced key disclosure from Curry,
4 page 3, line 24 through page 4, line 6, stating that the data in the motion data
5 cache can be compared with the user permission data to enable a driver
6 safety statistic to be calculated based on when and where the mobile wireless
7 computing device was used, and the motion of the device while driving a
8 vehicle. In the same paragraph, Curry explains that the driver safety statistic
9 can also be decreased based on driving behavior, such as speeding, abnormal
10 acceleration, abnormal deceleration, and taking sharp turns. Notably, and as
11 we've just seen in Curry's Figure 1, Curry's mobile phone client includes
12 both a motion data cache and a use permission database. From this and
13 related description, a person of skill in the art would have understood it and
14 found not obvious that Curry's comparison of the data and the motion data
15 cache with the user permission data for purposes of calculating a driver
16 safety statistic is a process that Curry suggests can be beneficially performed
17 locally by the mobile phone prior to wirelessly communicating resulting
18 driver safety performance data to the data server.

19 Now for all of Curry's real-time dynamic call handling, which
20 Curry further describes as being performed locally, Figure 3 relies on a
21 similar local comparison of the data. And further, Curry concludes this
22 paragraph with the express statement that, quote, the safety statistic can be
23 reported to or calculated at the data server. Now, Patent Owner contests that
24 this language at a minimum would have suggested to a person of skill that
25 the mobile phone can locally process sensor data to derive driving

1 information used by the phone to calculate the safety statistic for purposes of
2 reporting that statistic to the data server. But in view of these and other
3 disclosures by Curry, we don't believe that Patent Owner's contrary assertion
4 that Curry would have been understood as limiting derivation of driving
5 information to the server is credible. In that regard, I'd like to ask you to
6 turn with me to slide 75 of the demonstratives. And we can see reproduced
7 at center of that slide important disclosure by Curry. It was originally cited
8 within the petition and in Dr. Michalson's declaration at paragraphs 64 and
9 170 --

10 JUDGE IPPOLITO: Counsel, can I pause you there for a second?
11 We, I think that for myself and some of my panel members, we are
12 experiencing your audio and your video cutting in and out a little bit. It
13 could be on our end, or it could be on your end.

14 MR. TILLER: I'm having the same problem, Your Honor.

15 JUDGE IPPOLITO: Okay. So, I wanted to stop you because I
16 didn't hear what slide you were on, but I also think that this technical issue
17 hasn't corrected itself yet. So, just wanted to let you know that your audio
18 and video is cutting a little bit in and out. It's not so much that I'm missing a
19 lot, but I did miss the slide number you're on.

20 MR. PATRICK: Yeah, thank you, Your Honor, for pausing us. I
21 think we're experiencing some of that ourselves. We'll ask our technical
22 team to come in. For reference, I'd ask you to turn with me to slide 75. I
23 think we can keep going for now, but if we continue to experience these
24 switches, we might want to pause to correct. Yeah, if you wouldn't mind,
25 Your Honors, we'd like to take a short break to see if we can resolve this.

1 JUDGE IPPOLITO: Sure. I've stopped the clock for the court
2 reporter. We are at 1:10.

3 MR. PATRICK: Okay. So, resuming the presentation, I'd ask
4 Your Honors to turn with me to slide 75 of Curry, and we can see
5 reproduced at center important disclosure by Curry that was originally cited
6 within the petition and in Dr. Michalson's declaration at, for example,
7 paragraphs 64 and 171 of a trade-off between the complexity of the mobile
8 device and the amount of information communicated on the mobile devices
9 network that would have informed a person of skill's decision as to the
10 location of software and firmware used to create the functionality of the
11 system for monitoring and controlling the use of a mobile computing device
12 illustrated in Figure 1. More, Curry adds that the actual location of the
13 modules, caches, and databases can be decided based on engineering and
14 business needs.

15 So, recapping what we'd earlier discussed, Curry discloses a
16 driving safety statistic that is determined based both on a comparison of
17 locally stored accelerometer data to locally stored use permission data and
18 on driving behavior information, including abnormal acceleration and
19 deceleration, that is itself derived from the same locally stored accelerometer
20 sensor data. Curry then adds that the calculated statistic can be reported to
21 the data server and depicts wireless communication between the mobile
22 phone client and the server, including driver safety performance data. Even
23 if one were to accept, for the sake of argument alone, that this express
24 disclosure is insufficient to suggest local processing of raw sensor data to
25 derive driving information as Patent Owner would have it. Curry, at page

1 12, lines 3 to 18, specifically encourages a person of skill to create Figure 1's
2 monitoring and control functionality by locating the involved modules,
3 caches, and databases wherever makes sense in view of business and
4 engineering needs, further accounting for a trade-off between the complexity
5 of the mobile device on the one hand and the amount of information
6 communicated on the mobile devices network on the other. And based on
7 these and further disclosures, we respectfully submit that Dr. Michalson's
8 testimony accurately indicates that a person of skill would have understood
9 that Curry's mobile phone locally processes raw sensor data to derive driving
10 information.

11 I'd like to pause for a moment to address any questions that Your
12 Honors may have with respect to these aspects of Curry's disclosure before
13 briefly turning to a discussion of Rabu and the enhancement of Curry based
14 on Rabu's teachings.

15 All right. Hearing no questions at the moment, now I'd like to ask
16 Your Honors to turn with me to slide 20, which reproduces at bottom
17 disclosure from Rabu of use of a generally conventional accelerometer to
18 measure acceleration due to gravity and based on that measurement,
19 processing an angle of tilt with respect to a reference plane. And as Dr.
20 Michalson explains, in paragraph 65 of his declaration reproduced at the top
21 of this slide, Rabu describes using an accelerometer embedded within a
22 portable media device, which could be, for instance, a mobile phone, to
23 determine whether the portable media device is in a dock resting on a
24 surface or being handled by a person in addition to whether that device is
25 located in a moving vehicle or a stationary vehicle. In that regard, Rabu

1 notably describes a first orientation determination that informs whether the
2 mobile phone is in a dock resting on a surface or being handled, and a
3 second motion determination that informs whether the mobile phone is
4 located in a moving vehicle or stationary vehicle. And, as just discussed, for
5 instance, Rabu's orientation determination is based on an angle of tilt that is
6 itself determined based on the generic accelerometers measure of
7 acceleration due to gravity. And as further shown on this slide, Rabu further
8 contemplates that, quote, in some embodiments, accelerometer 409 can
9 sense the amount of dynamic acceleration. Based on this information,
10 processor 404 can determine a frequency spectrum associated with the
11 holder motion and consequently determine the motion status of PMD 400,
12 unquote.

13 Regarding orientation, and as shown in Rabu's Figures 1 through 3,
14 which are reproduced at the bottom of slide 21, Rabu discloses that when the
15 mobile phone detects that it is at a specific angle, it can determine that it is
16 coupled to a specific dock and can switch to an associated mode of
17 operation. Slide 22 reproduces at bottom Figure 5 of Rabu which shows
18 operational modes A through G. As you've seen, those modes take into
19 account both orientation and motion status of the mobile phone. For
20 instance, Rabu described switching operating modes based on determining
21 that the phone is docked in a moving vehicle as opposed to being handheld
22 while located in a moving vehicle. And as shown on slide 23, Rabu's
23 processor 404 uses the same generic accelerometer 409 to determine both
24 the phone's motion status and orientation angle. In that regard, I'd like to ask
25 Your Honors to turn with me to slide 34, which at the upper left shows the

1 petition's contention that a person of ordinary skill in the art would have
2 found obvious the integration of Rabu's dock-status sensing and associated
3 mode shifting capabilities into Curry's phone to promote safe driving. And
4 along those lines, the petition at page 13 noted that Curry suggests
5 correlating different activity modes with different operating modes and
6 accounting in nuanced ways for phone usage context when determining
7 driving scores in phone usage restrictions, and that Rabu describes
8 discerning phone usage context from accelerometer data indicating phone
9 orientation angle and motion status and changing the phone's operating
10 mode to account for that context. For instance, Rabu's Figure 5 and related
11 description picked up switching operating modes based on determining that
12 the phone is docked in a moving vehicle. And the petition noted that it
13 would, for example, have been obvious to change the phone's operating
14 mode to one involving relatively fewer restrictions if the phone is docked
15 within a moving vehicle as opposed to, for example, being handheld within
16 that vehicle. The result, and as Dr. Michalson explains in paragraph 87 of
17 this declaration reproduced at upper right, is the device with added
18 functionality capable of defining and determining different types of driving
19 periods based on user inputs and sensor data and of appropriately restricting
20 phone use and rejecting user driving scores depending on the type of driving
21 period determined.

22 Now, Patent Owner has argued that a person of skill would not
23 have enhanced Curry based on Rabu's teachings, they found difficulties that
24 they've alleged with respect to determining motion status using frequency
25 spectra, despite Rabu's expressed recommendation of that approach in

1 connection with some of its embodiments. For example, in the portion of
2 Rabu's column 4 disclosure that we earlier discussed. And Patent Owner's
3 argument fails for at least two reasons. First and foremost, it asks Your
4 Honors to look past Rabu's expressed disclosure recommending its
5 exemplary method of motion status determination, and to instead imagine
6 that a person of skill would have been so dissuaded by alleged difficulties
7 with frequency spectra-based determinations that to have disregarded that
8 disclosure and with it the proposed combination. In our view, that simply is
9 incredible based on what Rabu actually teaches. And second, Patent
10 Owner's argument confuses the Curry-Rabu combination, which as proposed
11 in the petition, did not specifically rely on the use of frequency spectra to
12 determine motion status. Again, at the upper left of slide 34, the petition
13 instead noted that the person of skill would have found obvious the
14 integration of Rabu's dock status sensing and associated mode shifting
15 capabilities into Curry's phone to promote safe driving.

16 And turning to slide 35, we see at lower left, Dr. Michalson's
17 testimony that a smartphone processor leveraging a generally conventional
18 accelerometer such as that found in Curry's phone can be used to determine
19 both an orientation angle and motion status of the smartphone for the
20 purposes of a certain context associated with the phone's usage and changing
21 the phone's operating mode. As should be apparent, Patent Owner is simply
22 incorrect in asserting that the combination proposed by the petition
23 specifically relied upon Rabu's teachings with respect to frequency spectra.
24 And to the contrary, if the proposed combination relied on Rabu's teachings
25 with respect to detecting holder status based on orientation angle, which is

1 itself determined based on gravity, not frequency spectra, and is further
2 taught by Rabu, leverage that orientation in combination with motion data to
3 provide the benefits that flow from better accounting for phone usage
4 context and multimodal operations. In that regard, Curry already describes
5 using accelerometer data to determine a change in activity from, for
6 example, stop to driving, and further expressly states at column 16, line
7 7322, that its system would have been capable of using acceleration data to
8 determine the change and then further estimate the motion types before or
9 after the change. In other words, Curry already describes motion status
10 information derived from accelerometer data. And as noted in the Petitioner
11 reply at 22, consistent with Dr. Michalson's earlier testimony reproduced on
12 slide 35, a person of skill would have readily appreciated that the
13 accelerometer found in Curry's phone could be used to determine both
14 orientation angle, as taught by Rabu, and motion status, as taught by either
15 of Curry or Rabu, to advantageously enable the more nuanced multimodal
16 operations suggested by Rabu. And for at least this additional reason, the
17 Patent Owner's arguments against the Curry-Rabu combination fail.

18 More, and as shown at slide 43, Dr. Michalson has testified that
19 configuring Curry's systems to leverage Rabu's teachings would require only
20 routine programming knowledge, which was well within the skill of a
21 POSITA there. And that the change to Curry would have amounted to
22 nothing more than the use of a known technique to improve similar devices.
23 In each instance, a smartphone equipped with a generic accelerometer in a
24 similar way and combining prior art elements according to known methods
25 to yield predictable results.

1 Before moving on to the further enhancement of Curry based on
2 Katayama's teachings, I'd like to briefly pause to answer any questions that
3 Your Honors may have at this time with respect to Curry and Rabu.

4 With that, I'd like to ask Your Honors to turn with me to slide 46,
5 addressing the further combination with Katayama. More specifically, at
6 left, we see Dr. Michalson's observation that a POSITA would recognize
7 that important information stored in Curry's local memory is subject to the
8 risk of being inadvertently erased and overwritten with new data and would
9 recognize in Katayama's teachings a solution that could be readily applied in
10 the context of the Curry-Rabu phone bifurcation of the local memory into
11 temporary and long-term sections with storage of information identified as
12 important in the long-term section.

13 On slide 47, we see Dr. Michalson's further testimony that a
14 POSITA would have also recognized that configuring the Curry-Rabu
15 phone's memory in this manner, while generally applying Katayama's related
16 data storage techniques, would enable effective use of the memory without
17 erasing important situation data and eliminate accumulation of useless data
18 while at the same time furthering Curry's goals of directing and preventing --
19 of detecting and preventing unsafe driving behaviors and generating related
20 driving safety scores. In short, and as shown on slide 48, a person of skill
21 would have understood and found obvious that the Curry-Rabu-Katayama
22 phone resulting from these collective enhancements would, in comparison
23 with the Curry-Rabu phone, enjoy improved data management with reduced
24 likelihood of erasure of important data.

25 More specifically, and skipping to slide 51, we see Dr. Michalson's

1 testimony that Curry's phone 106 with stored sensor data and related
2 information, but in the specific manner taught by Katayama would identify
3 and preserve information determined to be important in a form of long-term
4 storage. And against this, Patent Owners argue that Katayama is
5 prohibitively different from the '369 Patent and that Katayama does not
6 disclose a mobile telecommunications device and that it is instead akin to a
7 black box recorder that requires data from vehicle sensors. This argument
8 we believe improperly attacks the references individually rather than
9 regarding the combination set forth in the petition, which demonstrates how
10 a person of skill would have applied Katayama's storage and data handling
11 techniques in the context of Curry's mobile device, which does not require
12 data from vehicle sensors.

13 Patent Owner also alleges that Petitioner has not explained how a
14 person of skill would or could have configured the internal storage in Curry's
15 iPhone to have the specific configuration disclosed in Katayama, yet the
16 petition provided precisely that explanation at pages 22 through 27 and did
17 so supported by Dr. Michelson's corroborated testimony. In that regard, it
18 may be useful to briefly discuss Katayama's teachings and their integration
19 into Curry in more detail. And as shown in Katayama's Figure 5, which is
20 reproduced at the bottom of slide 52, Katayama describes a memory 82
21 featuring an architecture with multiple sections, including temporary data
22 storage section 802 and a situation data storage section 803. Relatedly,
23 Katayama describes data handling techniques that enable effective use of the
24 memory's limited capacity and that ensure that important data will not be
25 erased but instead will remain available for easy and accurate analysis of

1 accidents and/or risk incidents. And as explained in the petition in pages 22
2 through 23, a POSITA would have found obvious that like Katayama's local
3 memory 82, the local memory featured in the Curry-Rabu phone has a
4 limited capacity for accommodating both continuously and sequentially
5 received sensor data in the information derived therefrom, and would have
6 recognized that partitioning the local memory into temporary and long-term
7 sections with storage of information identified as important in the long-term
8 section would have prevented important data stored in the collection data
9 cache from being deleted prior to later transmission. And more specifically,
10 and as taught by Katayama, the petition explained that a POSITA would
11 have configured the Curry-Rabu phone to receive situation data, including
12 sensor data, at a constant sampling time one after another in a chronological
13 order, and to write the received situation data in a temporary data storage
14 section within the Curry-Rabu phone's local memory. And as also taught by
15 Katayama, a POSITA would have configured the Curry-Rabu phone to
16 record situation data determined to be important with a metadata identifier
17 marking it as such and to transfer situation data with the identifier from the
18 local memory's temporary storage to its long-term section.

19 Respectfully, Petitioner submits that Patent Owner's limited
20 arguments against the Katayama combination do not meaningfully contest
21 these points, which therefore stand unrebutted on record. With that, and
22 unless Your Honors have further questions, I'd like to turn the podium over
23 to my colleague, Ryan, who will address obviousness of claims over the
24 combination of Curry, Rabu and Katayama.

25 JUDGE IPPOLITO: I just have one question before we move on.

1 So, the way that I see some of the limitations connected here is, specifically
2 to this three reference combination, is that one, there is a question and
3 certainly a dispute as to whether Curry discloses that the processing is
4 happening on the mobile device. And let's say that maybe in the express
5 disclosure, Curry doesn't explicitly say that there's processing that's
6 happening on your own. There is this data server that's connected. In the
7 event that that's how we read the reference, I want you to take us through
8 why then we would make these changes or why a POSITA would make
9 these changes to Curry to have the mobile device process on the mobile
10 device. In addition, placing in more memory or different types of memory
11 than what is already there in order to do this all on the mobile phone. I
12 understand you're pointing us to page 12 in that disclosure about trade-offs
13 and I want to understand what exactly is the trade-off here that we're going
14 for. You're arguing it would be preferable if we read Curry in the first
15 instance to not have that processing take place on the mobile phone device?

16 MR. PATRICK: Thank you, Your Honor. I really appreciate your
17 question. I think I'll answer it directly first by entertaining, if we were to
18 assume for the sake of argument that Curry does not already disclose local
19 processing of the sensor data in order to derive information, why it would be
20 modified to do that. And then after that, with Your Honor's permission, I'd
21 like to briefly talk about some of the other embodiments of Curry -- the
22 additional disclosures that we just believe it's at the very least suggested and
23 even would have been obvious based on Curry itself to do that local
24 processing. With respect to that page 12 disclosure that we highlighted on
25 slide 75, it's of course interesting that it refers specifically there to Figure 1

1 of Curry, and Figure 1 of Curry in case it's helpful is reproduced on slide 10
2 of our demonstratives, and the trade-off that's described expressly in Curry
3 that would have been a motivating consideration in terms of where to the
4 various functionality modules caches, et cetera, involved in Curry's
5 processes is one between complexity of the mobile device, and depending on
6 the amount of functions that are attributed to that device, it could be more or
7 less complex versus the amount of data that would have to be passed
8 between the mobile device and connected devices such as the data server.
9 And along those lines, Curry describes as an example that the mobile device
10 that it refers to throughout could be an iPhone. So, we know in that context
11 that we're dealing with, and as we mapped in the petition, an iPhone with its
12 various capabilities, including the memories and so on. And so first, we
13 have disclosure from Curry, the related testimony of Dr. Michalson, and
14 then additionally the record that is developed showing that the iPhone
15 certainly could do these things that adds the necessary memory and
16 processing capabilities. And in terms of why it would have been obvious to
17 do them locally, considering the trade-off that's described between
18 complexity and traffic over the network, and further accounting for business
19 and engineering needs, if you were to imagine that you're starting with a
20 Curry device actually implemented, as shown on Figure 1 within the iPhone,
21 the iPhone has a certain amount of complexity that's already there. It
22 already has its processing capabilities, it's included memory, and so on. And
23 we certainly submit, for Your Honors' consideration, that it's fully capable of
24 doing this local processing. And so, in terms of that trade-off, if you're
25 starting with that example that's disclosed, that's a known quantity. And

1 what is unknown would be perhaps the difficulties involved in actually
2 passing information between the iPhone and a connected data server at
3 various points in time. And you can see on Figure 1 that there is depicted
4 data flow of user permission data coming from the server to the mobile
5 phone client to be stored on the user permission database. And further,
6 there's driver safety performance data coming out of the mobile phone client
7 and to the data server. If there were issues similar to what we've all
8 experienced today in terms of connectivity, that might not be ideal in terms
9 of being able to do things in real time if you have to be connected to a
10 different device. And that would be an example of a sort of business or
11 engineering consideration that would motivate a person of skill to actually
12 implement things on the device itself. So, I hope that that's helpful as a first
13 part of the answer.

14 And then additionally, I'd like to point to some further disclosures
15 of Curry that lead us to believe that certainly this type of processing would
16 have been understood already as being performed locally. And in that
17 regard, for instance, I believe it's Curry Figure 5 actually shows a flow for
18 activity mode recognition involved in dynamic color handling that involves
19 comparison of data from the sensors against a threshold to determine
20 whether or not the vehicle is being driven. And in that case, Curry's phone
21 includes an embedded accelerometer and a GPS sensor. That example deals
22 with detecting a location of the phone at two different points in time. And
23 then based on the difference in time, determining a speed at which the
24 vehicle is being driven. And based on that derived information, driving
25 information, we would say, from sensor data, the system can then determine

1 that yes, the vehicle is being driven, so it can enforce the safety standards
2 that are involved in Curry. That's an example of local processing that's
3 directly disclosed. It may not be as direct with respect to where the
4 abnormal acceleration and deceleration is derived. But at the very least, we
5 think it's suggested by Curry that it could also be done locally using the
6 same sort of system. And, you know, there we see Figure 3 is another
7 embodiment that goes into some more detail involving local processing,
8 depicting actually a driving safety performance database where data would
9 be gathered prior to transmission. We think all this together, you know,
10 certainly is suggestive in view of that additional disclosure from page 12, it
11 would have been obvious to do this locally. And I hope that's helpful to
12 Your Honors as you're considering this issue.

13 JUDGE IPPOLITO: Thank you. I do have another question, but
14 before we move on from this one, I want to see if my colleagues have any
15 additional questions. My second question is about Katayama and the dispute
16 that I think is still in play as to whether Katayama has long-term memory or
17 persistent long-term memory. And I wonder if you could address that.

18 MR. PATRICK: Thank you, Your Honor, I appreciate that
19 question. I believe my colleague Ryan may speak to it in more detail, but at
20 the moment, I would offer that Katayama is expressed about bifurcating its
21 local memory to include a transient short-term memory in which sensor data
22 that's constantly, sequentially being written can be stored and buffered. And
23 then as that recording process is taking place, actually deriving information
24 about the sensor data locally on its device about what that sensor data
25 represents. And in that regard, Katayama is interested in determining

1 whether it might be representative of an accident or what it calls a risky
2 incident, driving behaviors that might be associated with accidents. If so, it
3 actually flags, so the metadata identifier, a section of the data, a selection of
4 the data, and then transfers that to the long-term storage for persistent
5 storage. In Katayama's description, it discusses doing that to ensure that it
6 can be maintained and not inadvertently overwritten prior to a later
7 transmission to a different device. And in that regard, the data that's stored
8 in the long-term storage of Katayama is persistently stored at least as long as
9 necessary to ensure that a transfer can later take place without it being
10 randomly overwritten. And in that regard, we do think that this needs a
11 reasonable understanding of long-term storage as it would have been
12 understood by a person of skill in relation to the claim.

13 JUDGE IPPOLITO: Thank you. And you have about six and a
14 half minutes, but you can always go into your rebuttal time if needed.

15 MR. PATRICK: Yeah. Thank you, Your Honors. We may end
16 up doing that. And with that, I'll ask my colleague, Ryan, to join me as a
17 buddy.

18 MR. CHOWDHURY: Thank you, Your Honors, and may it please
19 the Board. Apologies for the technical difficulties. We'll try to make it
20 easier going forward. Just wanted to confirm that you can hear our audio
21 and that we can hear your audio, and I think that's the case. And if so, I'll
22 begin this part of the presentation.

23 We'll plan to address limitation 1.7, and time permitting, aspects of
24 limitation 1.10 that you have asked about Judge Ippolito. Let's first start
25 with slide 66. On the left, limitation 1.7 recites in part process the sensor

1 data during the driving period to derive driving information. You've heard
2 today from Andrew that the element driving information has been a focus by
3 the Patent Owner in its papers, so we'd like to first examine what was
4 brought in the petition with respect to it. As we do that, we'll note that the
5 Petitioner's view is that Curry's disclosure alone is sufficient to render the
6 requirements of limitation 1.7 obvious. However, because the primary
7 combination advanced in this proceeding includes Curry, Rabu, and
8 Katayama, this record further demonstrates satisfaction of limitation 1.7
9 based on Katayama's teachings.

10 The teaching served two additional purposes. First, they
11 independently disclose their recited driving information. Second, they
12 include well-known local data handling techniques relating to driving
13 information corroborating how Curry would have been interpreted by a
14 person of ordinary skill in finding limitation 1.7 obvious.

15 If you could turn to slide 68. On the left, you see that page 35 of
16 the petition identified Curry's driving behavior information as satisfying the
17 requirements of the driving information. The right shows the underlying
18 disclosures from Curry, which includes abnormal acceleration as an
19 example.

20 Slide 67, please. Here, we see that the Patent Owner identified
21 acceleration as an example of dragging information, which is congruent with
22 the mapping to abnormal acceleration, just discussed.

23 Slide 11, please. As you've already heard from Andrew today, the
24 portion of Curry shown on this slide suggests not only local processing of
25 sensor data on Curry's mobile phone, but also the derivation of information

1 from such processing. And this type of information satisfies Patent Owner's
2 articulation of driving information. Patent Owner seems to characterize
3 Curry's abnormal acceleration as representing raw data. In doing so, Patent
4 Owner focuses on the processing operation recited in limitation 1.7. And it
5 proposes an interpretation of Curry that demands any processing or analysis
6 of sensor data to only occur at the data server 104. As Andrew noted, this
7 assertion lacks credibility, not only because it seemingly is focused on a
8 single embodiment within Curry, the Figure 2 embodiment, but because the
9 assertion ignores or otherwise disregards various disclosures within Curry,
10 suggesting the contrary. Andrew discussed some of these disclosures, and
11 one example of that contrary disclosure within Curry is its real-time dynamic
12 call handling in relation to its Figure 3 embodiment. As explained on pages
13 35 and 36 of the petition, bits would have involved locally processing sensor
14 data in relation to activity monitoring to determine, for instance, whether a
15 user is permitted to receive an incoming phone call while driving.

16 We'll now explore some other disclosures together. Let's first start
17 with the two highlighted portions shown on slide 11. In the top highlighted
18 portion, we see that Curry describes that data and the motion data cache is
19 compared with user permission data to enable a driver safety statistic to be
20 calculated. Notice how both of the data that's used for comparison are
21 actually available for processing on the mobile phone. This is shown in
22 slide 10.

23 Turning to slide 10, Curry's Figure 1 is shown on the right side.
24 Here we see that the mobile phone 106 includes a motion data cache 118 and
25 a use permission database 112. Each of these components locally store on

1 the mobile phone 106 the specific types of data that Curry calls out as being
2 compared when calculating a driver safety statistic. And while we're here,
3 note the arrow between the driving safety server 104 and the wireless
4 communication links 106 on the top left portion of the box labeled 110.
5 Note also that the arrow extending from the box labeled 108 to the
6 permission database 112. Each of these arrows is unidirectional and reflect
7 data flows of use permission data in one direction, from the data server 104
8 to the mobile phone 106, and specifically for storage and database 112
9 within the mobile device.

10 Slide 11, please. Let's look back up to the top highlighted portion.
11 Based on the architecture we just discussed in relation to Figure 1, when
12 Curry says that in this portion, the two types of data are compared in
13 calculating the driver or safety statistic. It indicates that the calculation may
14 occur on the mobile phone 106, which as previously noted, already has local
15 access to the data. And in performing this calculation, the mobile phone 106
16 locally processes the data in the motion data cache 118, which includes the
17 sensor data in relation to permission data stored in database 112.

18 This makes sense for two reasons. First, Figure 1 clearly teaches
19 that use permission data is provided by the data server 104 to the mobile
20 phone 106. And so, it makes sense for the comparison to be made on the
21 device where the data is located. This becomes important for real-time
22 processing to prevent delay associated with transmission back to the server,
23 the relevant teachings from which are noted on pages 35 and 36 of the
24 petition. And as you heard earlier from Andrew, Curry already describes
25 trade-offs in various implementations of the teachings of its disclosure.

1 Second, the highlighted portion shows that the calculation is based
2 on quote "when and where a wireless computing device was used and the
3 motion of the device." Each of these types of data are similarly captured on
4 the mobile phone 106, and they also specifically relate to its use. As
5 Andrew mentioned earlier, the descriptions of Figures 3 and 5 further
6 identify other types of processing performed locally on the mobile phone
7 106, reinforcing that it would have been obvious for the mobile phone 106 to
8 process sensor data in calculating a driver safety statistic.

9 Let's now look at Figure 3 in more detail. Slide 13, please. Curry's
10 Figure 3 is shown on the right side of this slide. Here, like Figure 1, we
11 similarly see a motion data cache 304 and a use permission database 318,
12 each of which are located on Curry's mobile phone. While we're here, also
13 notice the direction of the arrow between mobile phone communication links
14 320 and the use permission database 318. It's unidirectional. And like
15 Figure 1 -- like the Figure 1 embodiment, Curry's Figure 3 embodiment
16 similarly contemplates use permission data being provided to a mobile
17 device.

18 Slide 10, please. On the left, you see that having considered the
19 various disclosures of Curry, we just discussed, Dr. Michalson opined that
20 both raw data and derived driving behavior information are stored on mobile
21 phone 106. He then goes on to say that the mobile client 110 processes each
22 of the stored information for various purposes, including to determine a
23 mode within which the mobile phone should operate and to generate a
24 driving safety score. Notice also that when referring to storage elements, Dr.
25 Michalson specifically references motion data cache 118 and driving safety

1 performance database 324, elements that are part of Curry's Figure 1 and
2 Figure 3 embodiment, respectively. And as previously --

3 JUDGE IPPOLITO: Counsel, I just wanted to let you know you're
4 about two minutes into your rebuttal time.

5 MR. CHOWDHURY: Thank you for letting us know. We'll take
6 just a couple of minutes to wrap up the discussion on element 1.7, and I
7 wanted to make a few points on Katayama as well.

8 If you could please turn to slide 11. While we're on the last
9 sentence, while we're in this portion of Curry, we'll note that the Patent
10 Owner addressed the last sentence in its sur-reply, so we'd like to take some
11 time to examine that today. We'll note here that Patent Owner focuses
12 primarily on Figure 2 of Curry, and you'll hear from Patent Owner today that
13 Figure 2 makes clear that any processing evaluation statistical analysis or
14 scoring must be done at the server. We think that Figure 2 is a distinct
15 embodiment from the teachings we just discussed with respect to Figures 1
16 and 3. So, while true that Curry's Figure 2 embodiment contemplates some
17 instances where calculation of a driver safety statistic occurs outside of
18 Curry's mobile device, this is just one embodiment, and it's certainly not
19 representative of the disclosure as a whole.

20 We wanted to make a couple of points on Katayama and how the
21 petition addressed Katayama's disclosure in relation to limitation 1.7. If you
22 could please turn to slide 92. On the left, we see here in paragraph 185 of
23 his declaration, Dr. Michalson opined that the Curry-Rabu-Katayama phone
24 would have been configured to write derived information specified in
25 situation data. We also see that the derived information includes two

1 specific examples, digitalized values and metadata identifiers, and page 43
2 of the petition provided two examples that mapped these two instances of
3 driving information, two examples of derived information to the driving
4 information recited in limitation 1.7. And so, while Curry alone is sufficient
5 to satisfy the requirements of limitation 1.7, Katayama independently
6 discloses examples of the driving information. And through the data
7 handling techniques taught by its disclosure, Katayama's signals local
8 processing of what is called situation data or derived information, which the
9 petition expressly mapped to the driving information.

10 I'd like to also answer your second question, Judge Ippolito. You
11 had asked about Katayama's teachings with respect to driving information,
12 and we would refer you to paragraph 51 which is on slide 46, which
13 described situation data storage section 803, stores the situation data for the
14 situation data, and we believe this disclosure in at least paragraph 51 of
15 Katayama is an example of long-term memory as recited in limitation 1.10
16 of the '369 Patent.

17 With no further questions, we'll reserve the remainder of our time
18 for rebuttal.

19 JUDGE IPPOLITO: Okay. You have about 14 and a half minutes.

20 MR. CHOWDHURY: Thank you.

21 JUDGE IPPOLITO: Patent Owner, did you want to reserve any
22 time for your sur-rebuttal?

23 MR. TILLER: Yes, Your Honor. I'd like to reserve 15 minutes.

24 JUDGE IPPOLITO: Okay. All right. Whenever you're ready.

25 MR. TILLER: May it please the Board. Thank you. My name is

1 Steve Tiller and I represent Patent Owner. Judge Ippolito, I want to hit on a
2 question. I'm going to go a little bit out of order here, but I want to hit on a
3 question that you asked with regards to Katayama in regard to whether, in
4 fact, the long-term memory, which has been described by Petitioner as 803,
5 actually stores information long term. And as we've noted in our papers,
6 Your Honor, there was the long-term memory that they -- that they -- that
7 the 803 that they allege to be the long-term memory, which you can see in
8 Figure 5, categorizes, or characterizes data based on most important versus
9 least important. And the fact of the matter is while they have -- while
10 Petitioner has argued that that is indeed long-term persistent memory, the
11 disclosure --

12 JUDGE IPPOLITO: Counsel, I'm going to pause you just for a
13 second because I think we're going to adjust our audio just for a second.

14 MR. TILLER: Sure.

15 JUDGE IPPOLITO: I'm going to stop the clock. We have a little
16 bit of our own technical difficulties. And then for the court reporter, it's
17 about 1:56. Okay. I think that the technical issues that have been addressed,
18 so you can go ahead. Sorry about that.

19 MR. TILLER: No problem, Your Honor, and please let me know
20 if there are continued problems. But, Your Honor, again, going to your
21 question with regard to Katayama, again, even in the arguments that we just
22 heard, Petitioner takes the position that 803 represents the long-term
23 persistent memory of Katayama. But Your Honor, I think correctly asked
24 the question, is there any data in this long-term persistent memory that is
25 actually being overwritten or tossed out or removed in any way? And there

1 is to be blunt. At paragraph 55 of Katayama, it states, and I am reading
2 verbatim: “In case that the capacity of the situation data storage section 803
3 runs out. The situation data whose importance is lower than the importance
4 of the new situation data is automatically erased and the new situation data is
5 recorded. Instead, that is temporary data.” That is overwriting, and yet it is
6 occurring in claim element 803 or in element 803 as described in Figure 5,
7 which is exactly where Petitioner argues is the long-term persistent memory.
8 Katayama does not stop there. In paragraph 57 at approximately line 23:
9 “Furthermore, in case that the capacity of the situation data storage section
10 803 runs out, the situation data whose importance is lower is updated in turn
11 and the situation data whose importance is higher remains, which makes it
12 possible to effectively use the memory.”

13 As Patent Owner has pointed out in its pleadings, the '369 Patent,
14 requires two separate memories. In one memory, the buffer is a short-term
15 memory where data is overwritten. Separately, there is a long-term memory,
16 a persistent memory in the right patent, which is for persistent storage. And
17 as paragraphs 55 and 57 point out, the alleged long-term memory in
18 Katayama is not persistent. It may not be long-term as it is overwritten in
19 the same way that the short-term memory in the '369 Patent is overwritten.

20 So, I wanted to address that, to go a little bit out of order, Your
21 Honor, to address that specific issue. Before getting to counsel's arguments
22 with regards to processing and where that processing takes place, I wanted to
23 just very quickly, Your Honors, point out a few issues that were not
24 discussed and which are points of contention. In this case, as you know, the
25 patent requires that the mobile device determine based on at least one of the

1 inputs received by the user interface and sensor data from the devices sensor
2 state set, a start of a driving period during which the mobile device is
3 removably attached to the vehicle and the vehicle is in use. And then the
4 mobile device must also process the sensor data from the sensor set during
5 the driving period to derive driving information associated with how a
6 vehicle is driven. There was no discussion from counsel in their
7 presentation with regard to the determining the start of a driving period.
8 And I think there's a couple issues that we have raised in our pleadings that I
9 think are important for us to know here.

10 First of all, the driving period. That is the object of this clause
11 determining the start of a driving period. The driving period must have
12 meaning. We have argued in our papers and in our demonstratives that the
13 driving period must be the entirety or a reasonable approximation for the
14 entirety of the period in which the vehicle is driven. Again, the purpose, if
15 we look at demonstrative 2, slide 2, the purpose of this patent, of the right
16 patent, is to assist with determining the cause of an accident, modifying
17 driving behavior, and determining insurance premiums. As you know,
18 Petitioner has taken the position that this determination of the start of a
19 driving period is initiated by a phone call being placed, or a phone call being
20 received. And then for some recording as described in Curry to occur after
21 the phone call has been received or placed, in Curry it's described as six
22 minutes. That time period is entirely untethered from driving. The driving
23 period could be two minutes. And yet Curry would say keep recording for
24 an extra four minutes or some extra time. The driving period could be two
25 hours, therefore, missing significantly significant amounts of data, all of

1 which would be important to an insurance company or to modify driving
2 behavior. The fact that the driving period as described by Petitioner is
3 initiated by a phone call. And that period that they call, the Petitioner calls a
4 monitoring period, does not use the term driving period. It specifically
5 refers to it as a monitoring period because of that setup and that initiation
6 misses out on significant portions of the driving period. Now, in that regard,
7 Petitioner takes the position that the driving period only has two attributes
8 that must be removably, that the phone must be removably attached or
9 removably affixed to the vehicle and the vehicle must be in use. And
10 Petitioner then says, so long as those two characteristics are met, then that's
11 the driving period. However, those are characteristics of the claims. Those
12 are not the characteristics necessarily of the driving period. The driving
13 period must have a meaning. Those words must have meaning. The claim
14 construction that Petitioner posits here to Your Honors is exactly the claim
15 construction that was posited to Judge Albright down in litigation down in
16 Texas involving these patents. And while I perfectly understand that Your
17 Honors are not bound by Judge Albright's decision, the fact of the matter is
18 Judge Albright said, no, that's not a reasonable claim construction. The
19 claim construction is what is known to a person of ordinary skill in the art.
20 And again, driving period, particularly when you look at the purpose of this
21 invention to determine the cause of an accident, to modify driver behavior
22 and to determine insurance premiums, it is critical that most if not all of the
23 driving period is recorded. And when this monitoring period is initiated
24 solely by a phone call coming in, or a phone call going out, or presumably a
25 text coming in or out, there is real opportunity and likelihood that much

1 information will be missed.

2 So, we disagree with the concept that the driving period simply
3 means to be some period in which the vehicle is in use, whether it's at the
4 beginning, middle, or end of the time period that the vehicle is being driven.
5 And if you think about it, that makes perfect sense. If phone call comes in
6 early during a driving period, records for six minutes, and then there's an
7 accident sometime later, there'll be no recording. If the insurance company
8 wants to know exactly what's going on with somebody's driving throughout
9 the time that they drive and yet there's only a small period of time being
10 recorded, the insurance company will not have accurate data to base its
11 insurance premiums. So again, it is critical and important to note that Curry
12 does not teach determining a start of a driving period. Rather, all at best it
13 teaches is determination of some monitoring period, which is not the entirety
14 of the driving period.

15 Now I would like to now address some of the arguments that were
16 raised by counsel. The first we've had to do with where is the processing
17 occurring? Is it happening on the phone or is it happening at a server or
18 some remote location? And I think we heard a lot about well, a person of
19 ordinary skill in the art would read this and know that they could do this or
20 that they could do that. The problem with that argument is the explicit
21 disclosure of Curry every time Curry talks about processing information
22 about how the vehicle is being driven, essentially where it talks about the
23 safety statistic. It talks about that calculation being done somewhere other
24 than the phone. And if Your Honors would look at slides, Patent Owner's
25 slide 26, starting with 26, you'll see that we essentially color coded the

1 figures here in Curry to show different points, different attributes, different
2 arguably claim elements. And the ones in red talk about where the
3 processing is occurring, and hopefully you can read this. But if you look to
4 the Curry disclosure in red, and if actually if we look at the top of the
5 disclosure here, it says, the motion data cache can also be used to record the
6 location, speed, and acceleration of the mobile wireless computing device
7 each time a phone call is transmitted from or received by the wireless
8 device. Then in red, the data in the motion data cache can be transmitted to
9 and stored on the data server, clearly indicating that this raw data from the
10 motion data cache, because again, the sentence before says the motion data
11 cache can also be used to record the location, speed, and acceleration, that's
12 the raw sensor data, can be transmitted to and stored on the data server. If
13 we go down a little farther to the next indication in red. For example, the
14 wireless device may collect speed and location information and report that
15 information back to the data server. This speed and location data comes
16 from the sensor set. It is location data from the GPS. That's the location
17 data. And the data from the accelerometer. That is the speed data. But
18 again, most notably, it is transferring that back to the data server. Further in
19 red, in one embodiment, the driving safety data. And again, that is the
20 location speed and acceleration data in the motion cache. In one
21 embodiment, that data can be recorded in mobile phones and then
22 transmitted to a centrally managed data server through wireless
23 communication links, such as GSM and GPRS.

24 If we then turn to slide 27, Curry goes on to state, again, in red, the
25 mobile phone client 110 utilizes the GPS and accelerometer sensors

1 embedded in mobile phones to track location, speed, and acceleration data of
2 a driver. The communication links available in the mobile phone can be
3 used to transmit driving safety performance data to a central server. Again,
4 that driving safety performance data is the raw data from the GPS and
5 accelerometer, and it is being transferred to a central server. Again, it
6 doesn't stop there. The motion data on that same page, the motion data from
7 a mobile phone can be transmitted to the driving safety performance
8 database in the data server. And again, without belaboring the point, Your
9 Honor, if we look at slide 28, again in red, there are further references where
10 Curry talks about transferring this data to a mobile phone, or to a server, I
11 should say. I apologize for that.

12 There was discussion, and I'm going to try to find it in Petitioner's
13 slides, about the statements in Curry that says the driver statistic can be
14 reported to the phone. I believe that is, and I apologize, Your Honors, for
15 not having that handy. But as I recall, it's on, sorry, I have a lot of stuff here.
16 I'm trying to find, it's on, I think, page 3 of Curry, where it talks about that
17 this information can be stored on the phone or it can be reported to the
18 phone. The logic that is being used here is that if the driver safety statistic
19 can be reported to the server, it must be the phone that's doing it. It is sort of
20 a process by elimination argument. It must mean that this information is
21 being reported to the server by the phone. That simply just is not accurate.
22 As we have shown, and if we look at Figure 1, for example, on page -- on
23 slide 23, there is an express disclosure of driving safety scores being
24 reported to the server. And it's up in green, as it's been color coded. It
25 shows the auto insurance companies, and it's a bi-directional arrow, having

1 driving safety scores reported to them, as well as driving safety scores
2 reported by them to the server. And my colleague pointed out that the
3 language that Petitioner relies on is identified in Petitioner's slide 11, where
4 it states the driver safety statistic can also be decreased based on driving
5 behavior such as speeding abnormal acceleration abnormal deceleration and
6 taking sharp turns. The safety statistic can be reported to or calculated at the
7 data server. The mere fact that this is passive voice, this is not saying the
8 phone does this, it's saying this statistic can be reported to the data service.
9 Petitioner wants the Board to think, okay well it could be reported by the
10 phone, but there is absolutely no disclosure of that, not anywhere. Whereas,
11 there is a specific and expressed disclosure of something else, of someone
12 else, of some other entity disclosing this score to the server. And again, that
13 is in Figure 1.

14 JUDGE IPPOLITO: Counsel, can I direct you, because I have a
15 question about this. There's two different paginations on these pages for
16 Curry. So, I think it's page 12, but it might be page 11 or 13, using your
17 citations. But back to the disclosure that was discussed by Petitioner, where,
18 you know, there are trade-offs. Let's say that we agree with you that Curry
19 may not have an expressed disclosure about where some of this processing is
20 happening on the phone. Can you respond to Petitioner's argument that it
21 may not even matter, because Curry is broad enough to contemplate the
22 alternative options?

23 MR. TILLER: So, and thank you for the question, Your Honor.
24 So, first let's start with what the right -- what the invention is in the '369
25 Patent. The '369 Patent is a mobile app, and it is designed to use a standard

1 phone. The whole design of the right patent is to take advantage. And
2 remember, the inventor came up with this idea back in 2010, before we all
3 had, you know, these unbelievable supercomputers in our hands. And but
4 the idea was to use a standard phone, use what's already in the phone
5 without a lot of coding, without a lot of engineering, that's the purpose of
6 right. So, then you go to Curry and Petitioner says, well, there's this, and
7 I've been using the terminology, Your Honor, catch all provision that kind of
8 says, well, you can have different modules in different places. But, and
9 Petitioner goes on to say, yeah, and it would be, you know, the iPhone three,
10 the iPhone three is, you know, it has this capability. Well, okay, lots of
11 computers, lots of things have the capability to do something, but there still
12 has to be a disclosure of how to do something. And in that language that
13 Your Honor cites to, and the Petitioner cites to, it just says you can move
14 modules from the phone to the server, from the server to the phone. But
15 there's no explanation of how that is done. There is simply a reliance on,
16 well, an iPhone three must be able to have this capability. But this was an
17 innovative, novel, non-obvious invention that truly differentiated it from
18 what was the standard of the day, which was the black box, which would
19 gather all this information and then would have to have this information
20 downloaded to a server to do any type of analysis. This was unique. And so
21 it is, I think it is a stretch, in fact I know it is a stretch, to say, well, simply
22 because Curry says you can move these modules around, that must mean
23 that the processing that Curry discloses as solely happening in the server can
24 just be, for lack of a better term, Your Honor, willy-nilly, let's just put it over
25 here. There has to be just some disclosure, there has to be some teaching of

1 doing that. And there isn't. And the reason is Curry had a completely
2 separate purpose. Curry's purpose was (INDISCERNIBLE). It didn't need
3 to record all this information. It didn't need to process this information in
4 real time because that wasn't the purpose of Curry. Curry was simply had
5 one basic objective. Can we accept the phone or can we not -- or can we
6 accept the phone call I should say. I apologize. Or can we not accept the
7 phone call? It is for dynamic call handling and dynamic call handling only.
8 So, then to turn around and say, well, this very narrow disclosure to deal
9 with calling. Now, somehow, because it uses some generic catch-all
10 boilerplate type language to say, well, you can put this in other places when
11 that's not what Curry was about, that's not what Curry was for. To simply
12 say, well, it would have made sense to a person of ordinary skill in the art to
13 do it, and that a person of ordinary skill in the art would have known how to
14 do it, Your Honor, there's no evidence of that. Simply put, there's just no
15 evidence of that.

16 I'd like to now move Your Honors to Rabu, because there was a lot
17 of discussion about what Rabu does, what Rabu doesn't do. And if we go to
18 slide 35, Patent Owner's slide 35, Rabu describes, if we look at Figure 5 on
19 the lefthand side, Rabu describes a number of different modes for the
20 personal mobile device, for the phone. Whether it's being held by somebody
21 in a moving vehicle, whether it's resting in a moving vehicle, whether it's
22 docked in a moving vehicle, and obviously Your Honors can read all those
23 yourself. The only way that Rabu determines whether the vehicle is moving,
24 and what Rabu describes this as, its holder motion status. The only way that
25 that is described in Rabu is by using and relying on frequency spectra -- the

1 frequency spectra of the phone -- to essentially estimate what the vehicle is
2 doing. Is it driving? Is it driving at a particular speed, what have you? And
3 if we go to the figures, all of the disclosure in Rabu about orientation, and
4 that's now what Petitioner wants you to focus on. We weren't relying on
5 frequency spectrum. And interestingly, they say we weren't relying on
6 frequency spectra because Mr. Wilson, Patent Owner's expert, criticized and
7 said frequency spectra is not a reliable way to determine whether a vehicle is
8 moving or not, and noticeably absent is any rebuttal or any response to that
9 assertion. We're not relying on frequency spectra. We're only relying on
10 orientation angle. Essentially, what we're relying on Rabu for is a
11 determination that some angle here is indicative of the phone being in a dock
12 as opposed to the phone being in my hand. But if we look at Rabu closely,
13 starting at slide 36, you'll see at Figure 6 that at 602 the PMD determines
14 holder status and immediately thereafter determines holder motion status.
15 That's the reliance on frequency spectra.

16 If we go to figure 7 on slide 37, you'll see that is how those are the
17 questions that have to be answered by the PMD when determining what
18 Rabu describes as holder status. But importantly, you'll see in green, blue,
19 and purple, every time holder status is determined, we immediately move to
20 holder motion status being determined.

21 So, if we move to slide 38, you'll see which shows Figure 8, Figure
22 9, and Figure 10 as determining the particular mode that is being determined
23 immediately after and is immediately part of the determination of holder
24 status. Nowhere is there any disclosure in Rabu of the holder status
25 occurring without holder motion status occurring as well? That's the whole

1 point of Curry. The whole point of Curry is determined is the phone in a
2 moving car? And noticeably, if we go to slide 39, in its original petition, the
3 Petitioner repeatedly cited to Rabu's holder motion status determination. We
4 identify all of those citations here.

5 Further, on slide 40, you'll see repeated reliance by the Petitioner
6 in its petition on the determination of holder motion status. At pages 11 to
7 12, it discusses the Curry-Rabu phone is leveraging orientation and motion
8 data. And you'll see on slide 41, the multiple times the petition relied on this
9 information specifically citing, expressly citing to the portions of Rabu that
10 rely on the determination of holder motion status through use of frequency
11 spectrum. Noticeably, Petitioner, I apologize, I had to grab a copy of
12 Petitioner's expert declaration. Even Dr. Michalson relies on this multiple
13 times. Before we get to the citation on slide 42, if we go to paragraph 68, Dr.
14 Michalson specifically talks about the same generally conventional
15 accelerometer which determined angle and holder status can sense the
16 amount of dynamic acceleration and based on this information the processor
17 can determine a frequency spectrum associated with older motion status.
18 And then he then gives an example of how that's important to this analysis.
19 If you look at paragraph 92 which is set forth on slide 42, Dr. Michalson
20 again talks about the determination of holder motion status where it talks
21 about Rabu describes switching operating modes based on determining that
22 the phone is docked in a moving vehicle. The way Rabu determines that it's
23 docked in a moving vehicle is by its reliance on frequency spectra.

24 We note a few other times Dr. Michalson expressly discussed the
25 use of frequency spectra and holder motion status on slides 43 and 44. And

1 then I think what is most important, Your Honors, is it appears from your
2 institution order, and I don't want to put words in your mouths obviously,
3 but the order itself talks about Petitioner having sufficiently explained that
4 Rabu teaches the limitation of mobile devices removably attached to the
5 vehicle and the vehicle is in use because, and if we go to parenthetical three,
6 the PMD can determine if the PMD is in a moving vehicle. Again, done by
7 frequency spectra. And the institution order goes on to further state and in
8 fact it is highlighted in the order itself based on the determined frequency
9 spectra the PMD can
10 determine whether it is in a moving vehicle, in a stationary vehicle, being
11 held by a moving person, or being held by a stationary person.

12 JUDGE IPPOLITO: But counsel, I have a question for you.

13 MR. TILLER: Yes.

14 JUDGE IPPOLITO: Is it fair to say that, for example, in your sur-
15 reply, that Patent Owner has had an opportunity to address the fact that the
16 Petitioner has, in Patent Owner's estimation, these different arguments
17 regarding Rabu. So that, I mean, let me start over with the question. Is there
18 a contention here that Patent Owner hasn't had an opportunity to address
19 Petitioner's arguments regarding Curry and Rabu's combination in either
20 iteration?

21 MR. TILLER: No, Your Honor, absolutely not. And here's what I
22 would say, the fact of the matter is, in our Patent Owner response, in our
23 initial response, we criticized the reliance on frequency spectra analysis.
24 That is, and if we look at slide 46, Mr. Wilson specifically states that a
25 reliance on frequency spectra is inherently unreliable for all the reasons that

1 he notes. And that therefore, a person of ordinary skill in the art would not
2 reasonably believe there would be a likelihood of success if Curry is
3 combined with Rabu. It was then in their reply that they walked this back.
4 We didn't make them walk this back. They chose to walk this back. They
5 chose to say, well, don't worry about our citations, our repeated citations to
6 the use of frequency spectra and the reliance on frequency spectra by Rabu.
7 Yes, we cited to that ad nauseam, but we don't agree that we relied on that.
8 And all we did was say, yes, you did. Yes, you did rely on this. And if you
9 didn't, there's sort of no point in Rabu anymore. Rabu doesn't work. All we
10 are doing, Your Honor, is pointing out Petitioner's own reliance. And it was
11 Petitioner who chose to walk this back, who chose to say, no, despite our
12 repeated citations, there is no opportunity, despite our repeated citations,
13 we're now not relying on frequency spectra. If anybody wasn't able to
14 respond it was us. It was Patent Owner, because it was in their reply that
15 they said, no, we're walking this back. We're actually relying on the
16 accelerometer of Curry. But remember, what they're doing is while they're
17 relying on the accelerometer of Curry, it's done pursuant to the teaching of
18 Rabu. That's what they're relying on. That's what they repeatedly cite to.
19 Now they're saying, no, we're just doing this one thing. If anybody hadn't
20 had the opportunity to respond, it was actually us. So, I think they've had
21 more than an opportunity to respond. And --

22 JUDGE IPPOLITO: I just wanted to maybe clarify my question
23 because I understand what I asked earlier was a little bit garbled. On page
24 19 of your sur-reply, you have made a response to what you've called the
25 Petitioner's walking back of its original position in the petition.

1 MR. TILLER: We pointed out the fact that they walked it back.
2 Yes, I agree with that. But now they're here making an argument to you
3 today that says, yes, we cited to this, but no, we didn't rely on frequency
4 spectra. And here's why we didn't rely on frequency spectra. Here's why,
5 despite the fact that these citations are there, that we actually didn't mean
6 what we said. Here's why. So, we're hearing some of this for the first time
7 right now. No, we didn't walk it back. And here's why we actually never
8 relied on it in the first place. But again, it was Petitioner who chose to cite
9 to Rabu over and over and over and over again. And then in its reply, say,
10 uh-uh, no, we didn't. And all we did in our ser-reply, say, yeah, you did.
11 And they had an opportunity to respond to Mr. Wilson's criticism of
12 frequency spectra. And so, there's been ample opportunity for them to
13 respond. And again, to the extent that they haven't had that opportunity to
14 respond, it's because of their own--I mean, I hate to use this term, Your
15 Honor, but it's because of their own--bait and switch. They relied on Rabu
16 and then they're saying, no, we're not relying on Rabu.

17 One thing that I want to, and again, the motivation to combine
18 Rabu is the ability to have these modes. They repeatedly talk about the
19 nuanced modes, a nuanced mode, A, B, C, D, all the different modes in
20 Figure 5. All of that relies on frequency spectra.

21 Very briefly, Your Honor, because I know we're coming to our
22 time period here, I just want to briefly talk about Katayama. And if we look
23 at slide 49, there's really no discussion at all by Petitioner as why a person of
24 ordinary skill in the art would even look to Katayama. Remember what
25 Wright is. Wright is using on a mobile phone, downloading an application

1 onto a standard phone to rely on the phone sensors, not the vehicle sensors,
2 to have its own power supply; it is everything that Katayama isn't.
3 Katayama does not rely on a mobile phone. Katayama does not rely on a
4 downloadable application. Katayama relies on power from the vehicle itself.
5 Katayama relies on vehicle sensor data. But there is -- so, Katayama is
6 really what I would say is the antithesis of Wright. And yet, Petitioner takes
7 the position that a person of ordinary skill in the art would have looked at
8 Katayama and somehow been motivated to combine it with this Curry-Rabu
9 phone. However, that motivation, as we pointed out, the motivation appears
10 to be, let's use something that write isn't to find the memory element of
11 write. If you look at slide 50 on the right side, and yes, these are rearranged
12 modules based on Katayama Figure 5 and right Figure 3. But these figures
13 show that Wright requires two different storage areas, two different storage
14 modules or databases. The protected storage, which is long-term storage,
15 and then a separate buffer storage, which is short-term storage. And that is a
16 unique memory requirement. And they go to Katayama just to try to get to
17 that point. Yet Katayama is completely different than Curry-Rabu.
18 Therefore, there would be no motivation. They haven't talked about a
19 motivation. Dr. Michalson doesn't talk about a motivation to even look to
20 Katayama other than to identify something that has these separate memory
21 components.

22 That's the definition of impermissible hindsight, Your Honors.

23 JUDGE IPPOLITO: Counsel, you have about two minutes before
24 you go into your sur-rebuttal.

25 MR. TILLER: Yes, thank you very much. So, as we talked about

1 earlier at the very beginning of our discussion here about 45 minutes ago,
2 the storage, the situation's data storage that Katayama relies on and the
3 Petitioner relies on for the protected storage, 34B of right, actually within
4 that storage, there is overwriting going on. It is not persistent. It is not long
5 term. It stores stuff as long as there is room. But that is not long-term
6 persistent storage as claimed as described by right. So, not only is there no
7 motivation to combine Katayama with Curry-Rabu other than impermissible
8 hindsight, Katayama still doesn't address the issue as set forth in Right, I
9 should say.

10 So, unless there are questions, Your Honor, I'd like to reserve the
11 rest of my time.

12 JUDGE IPPOLITO: And you finished basically right on time. So,
13 you have still 15 minutes for sur-rebuttal.

14 MR. TILLER: That's the beauty of having somebody here flipping
15 the time clock not showing -- telling me what's going on.

16 JUDGE IPPOLITO: All right. We will take a five minute break to
17 stretch and take a bio break if we need to. The time for the court reporter is
18 about 2:41, and we'll be back at 2:47.

19 MR. TILLER: Your Honor, how much time does each side have?

20 JUDGE IPPOLITO: You have 15 and Petitioner has 14 and a half.

21 MR. TILLER: Okay. Thank you.

22 JUDGE IPPOLITO: Right. So, we'll be back at 2:47. Thank you.

23 All right. We are back on the record. It's 2:47. Petitioner, are you
24 available? Are you here with us again? We'll give them another moment.
25 They're here now. Petitioner, are you ready and available?

1 MR. PATRICK: Yes, Your Honor, we're here. Can you hear us
2 okay?

3 JUDGE IPPOLITO: We can. I can. I believe that my colleagues
4 can as well. Right, so for rebuttal, we have 14 and a half minutes, and you
5 may begin whenever you're ready and I'll start the clock.

6 MR. PATRICK: Thank you, Your Honors. We're ready to begin.
7 Your Honors, I just wanted to fully address your questions on the long-term
8 storage element recited in limitation 1.10, and relevant disclosures in
9 Katayama. Patent Owner seems to take the position that Katayama Section
10 803 is not the recited long-term memory because it's not configured to
11 permanently store information. I just wanted to examine the claim language
12 further to evaluate this argument. The full language of limitation 1.10 is
13 shown on page xi of the petition, and when we read this limitation, we see a
14 singular memory that has two things, short-term memory, and long-term
15 memory. The limitation further says that the long-term memory is for
16 persistently storing driving information and that the storage short-term
17 memory is for transiently storing driving information. Patent Owner seems
18 to argue that the long-term memory is required to be some type of permanent
19 memory and that is prevented from being deleted. From the claim language
20 we just read, we don't see any language requiring any type of permanent
21 storage. Your Honors seems to recognize the same on page 47 of the
22 institution decision and noting that quote, the claim language does not
23 mention overriding long-term memory or prescription of the same. Instead,
24 as we read the claim limitation, the long-term memory is only required to
25 persistently store

1 driving information which only seems to require storage for a time period
2 over the transiently storing driving information as attributed to the short-
3 term storage. And what you have in Katayama is a temporary storage -- is
4 temporary data section 802. In other words, a source storage section that
5 temporarily or transiently stores information, and a section 803 that stores
6 information for a period of time greater than the corresponding period of
7 time where data is stored in section 802.

8 As to how we know that Katayama section 803 is the type of long-
9 term memory recited in element -- limitation 1.10 it's because Katayama
10 teaches that data stored in Section 803 persists there. For example, until it's
11 ready to be transferred to a different recording device. You can see that in
12 Paragraph 51 of Katayama. This paragraph of Katayama specifically says,
13 quote, the difference between the temporary data storage Section 802 and
14 the situation data storage Section 803 is the temporary data storage Section
15 802 temporarily stores the situation data, irrespective of the content of the
16 situation data. While the situation data storage Section 803 stores the
17 situation data for the record, basically without updating the situation data.
18 And the situation data is updated after being transferred to another record
19 device, for example, the detachable record device 7. So, Katayama not only
20 specifically addresses the differences between Sections 802 and 803, but it
21 offers an example of a scenario where Section 803 stores situation data for
22 the record basically without updating the situation data. So, even with this
23 example, Katayama teaches some type of persistent storage in 803. In other
24 words, storage for a time period that persists until the information is updated
25 when transferred to another record device.

1 We also wanted to address some arguments raised by the Patent
2 Owner with respect to Curry's Figure 1 architecture. As you've heard from
3 Patent Owner, according to the Patent Owner, processing to calculate a
4 driver safety statistic can only be performed remote from the mobile device
5 according to Patent Owner's interpretation of Curry. You'll also recall that
6 we noted that Curry expressly teaches that the driver safety statistic can be
7 reported to the server or calculated at the data server. Those are two specific
8 distinct embodiments. And even if Figure 2 supports Patent Owner's
9 limiting interpretation of Curry, there's still no express teaching within Curry
10 that a computing device -- computing element other than the data server or
11 the mobile phone calculates the driver safety statistic. And therefore,
12 represents the embodiment where the driver safety statistic is calculated and
13 reported to the data server.

14 Now, Patent Owner would have you believe that it's the website
15 that's labeled in Figure 2, but the related description of this element, for
16 instance, on PDF page 12, lines 19 through PDF page 13, line 19, has no
17 clear teaching of the website performing this type of reporting function. In
18 contrast, when you look at descriptions relating to mobile device, mobile
19 phone 106, you see as the reporting of a driver safety statistic by mobile
20 phone 106 is logically consistent with the disclosure shown in the portion of
21 Curry depicted on slide 11 of Petitioner's demonstratives. Here, we see
22 Curry saying that the mobile phone can collect information and quote, report
23 that information back to the data server. Now, if you turn to slide 10, you'll
24 see Figure 1 of Curry. Here we clearly see that the only exchange of
25 information between the website, access through device 102 and the server

1 104 is user permission data. So, when we're referring to the embodiments
2 where a driver safety statistic is reported to the data server, we don't see any
3 computing element other than the mobile phone 106 or the data server, data
4 server 104 as having performed that calculation.

5 Finally, to be clear --

6 JUDGE O'HANLON: This is Judge O 'Hanlon. Looking at that
7 figure you have on your slide 10, I believe this is what your colleague, Mr.
8 Tiller, referred to. Doesn't it look like the data -- I'm sorry, the driving
9 safety scores are transmitted between the server 104 and the auto insurance
10 companies 130 with that double-sided arrow? So, wouldn't it be a
11 reasonable interpretation to see, or to say that the auto insurance companies
12 are doing the scoring and transmitting it to the server, rather than the mobile
13 phone client?

14 MR. PATRICK: That is one way to look at the look at this figure
15 based on what's shown. We don't see any disclosure in in Curry that
16 indicates that the auto insurance companies have the requisite information
17 that's required to calculate the driver safety statistic as described in the
18 portion of Curry that's shown on slide 11 of Petitioner's demonstratives. As
19 he mentioned earlier, Curry teaches that the driver safety statistic is
20 computed based on a comparison of use permission data that's stored in use
21 permission database 112, and motion data cache data that's stored in motion
22 data cache 118. And so, while you do see a bidirectional arrow in driver
23 safety scores being exchanged between the auto insurance companies 130
24 and the driver safety data server 104, I think it's our view that the calculation
25 of the driver safety statistic requires the types of information that are

1 specifically shown in this figure as being stored in the mobile phone 106.

2 Any other questions on this point or on Figure 1 of Curry?

3 Hearing none, I'll say finally that to be clear local processing of sensor data
4 and the mobile phone 106 is not a modification of Curry's disclosure.

5 Rather, as previously noted, it's one of the embodiments that specifically
6 contemplated in Curry. When Curry tells you that the driver safety statistic
7 can be calculated and reported to the data server.

8 I also wanted to address arguments from Patent Owner that
9 Petitioner hadn't demonstrated how a person of ordinary skill in the art
10 would have implemented Curry to perform local processing and sensor data.
11 It seems that counsel is raising an argument that the portion of Curry shown
12 on slide 75 of Petitioner's demonstratives is non-enabling. We don't think
13 that argument is credible for various reasons. First, to the extent that the
14 Patent Owner's arguing that the disclosure in Curry is non-enabling, that
15 position is new and not reflected in any of Patent Owner's papers. Second,
16 it's largely irrelevant because Curry is a past publication. And as we all
17 know, patent literature is presumed enabling. And third, it's ultimately an
18 irrelevant point because Curry discloses what it says it does. And when it
19 says that the actual location where modules may be implemented may vary
20 depending on the trade-offs in implementation complexity, whether on a
21 server or a mobile device, it's telling a person of ordinary skill in the art that
22 it's in implementation detail. And when you combine that with the
23 disclosures that we discussed during this hearing, it's clear to a person of
24 ordinary skill in the art that local processing is at least obvious over Curry's
25 disclosure.

1 Any questions on any of the topics we discussed? Hearing none,
2 Petitioner rests its case.

3 JUDGE IPPOLITO: Thank you. Reset the clock. And Patent
4 Owner, you have 15 minutes. You can begin when you're ready.

5 MR. TILLER: Thank you, Your Honor. Judge Ippolito, I want to
6 respond to something you asked me earlier, which I may not have done a
7 very good job of responding to. With regards to Rabu and what I'll call our
8 walking back argument. I think what
9 is important to realize here is that the holder -- Petitioner now takes the
10 position, despite its repeated references to the reliance on frequency
11 spectrum, and indeed the Board's recognition of this reliance in its institution
12 order, Petitioner takes the position, no, we're not relying on frequency
13 spectra. We're not relying on the determination of holder motion status in
14 Rabu. All we're doing is relying on the determination of holder status. But
15 as we talked about earlier, and I just I want to make sure that the Board
16 understands this, holder status, or again, the determination of the angle of the
17 phone, has no purpose in Rabu. There's no point in it other than mode
18 detection. And mode detection as clearly disclosed in Figures 5 through 10
19 is the determination of whether the phone is docked or being handheld in a
20 moving vehicle that requires the combined use of Rabu's disclosure of
21 holder status, as well as Rabu's disclosure of holder motion status. So,
22 without the reliance on holder motion status, there's really no point to Rabu.
23 And for Petitioner to say we haven't relied on holder motion status because
24 all we're doing is relying on the generally acceptable or standard
25 accelerometer in Curry, again, if you read the petition, what was argued was

1 using the accelerometer consistent with the teachings of Rabu. And there
2 would be no motivation to combine Rabu without those nuances, and those
3 nuances expressly require reliance on holder motion status. And again, that
4 holder motion status, that ability for that to distinguish between moving
5 vehicles and people running and people standing, is so -- there's no
6 likelihood of success or little likelihood of success, as shown by Mr. Wilson,
7 as gone un rebutted by Mr. Wilson. That it just -- a person of ordinary skill
8 in the art would not have looked to Rabu.

9 Now, going to the argument that counsel just made with regards to
10 what he described as our non-enabling argument, we didn't say whether
11 Curry is enabling or not. That's not before the Board, that's not the subject
12 of what's going on here. If you look back at the language that they cite in
13 Petitioner's, slide 75, the location of software and firmware used to create
14 the functionality of the system for monitoring and controlling the use of a
15 mobile computing device can be based on a trade-off and can be decided
16 based on engineering and business needs. What we're saying there is there
17 are a lot of modules in the server. We see them in Figure 2. There is a
18 driving safety performance database. There's a driving safety monitoring
19 interface. There's a driving safety score evaluation. There's a driving safety
20 score database. There's a map interface. There's all sorts of stuff in the
21 server. And to simply rely on catch-all information or catch-all disclosure,
22 well, you can move that. You can move some, all, or none of that to the
23 phone without any explanation of how that is done, is not the type of
24 disclosure it would teach a person of ordinary skill in the art that the driving
25 safety score evaluation module, which is where this processing is done in the

1 server, that that should be moved or can be moved by a person of ordinary
2 skill in the art, just because of this, again, what I'll call catch-all statements.
3 The whole purpose of Curry, again, is to do dynamic call handling. To put
4 more on the phone and is required to dynamic to do dynamic call handling
5 doesn't make any sense. It defies what the purpose of Curry is.

6 And lastly, Your Honor, actually not quite lastly. Never believe a
7 lawyer when they say lastly. Never believe a lawyer when they say one
8 minute. It's always three. I had a judge tell me that one. And he was right.
9 The fact that there is the question that you asked, Judge O'Hanlon, about,
10 well, it is Patent Owner's argument that in response to the language that the
11 safety statistic can be reported to the server that there is an expressed
12 disclosure of the insurance companies doing it. But yet, Petitioner wants the
13 Board to say, well, despite that express disclosure, despite the fact that there
14 is clearly something going on here where the driver safety statistic can be
15 reported to the server from something other than the phone. We still think
16 that it's possible that the phone is actually doing this. That is guessing. That
17 is not a reasonable expectation based on -- or a reasonable interpretation.
18 When faced with an expressed disclosure of something, to then say, well,
19 that expressed disclosure is not the only thing. Again, you have to look at all
20 the figures here. And --

21 JUDGE HOSKINS: Counselor?

22 MR. TILLER: Yes.

23 JUDGE HOSKINS: This is Judge Hoskins. I get your point on the
24 double, in the Figure 1 of Curry, the double-headed arrow, and it says next
25 to there, it says driver safety scores. But it also says insurance premiums on

1 the other side. And as far as I can tell from the written description in Curry,
2 the only written description that I can tell about that communication is that
3 the driver safety scores are going to the insurance company from the server.
4 And then the insurance company is responding with the insurance premiums
5 going back to the server. So, do you have anything other than kind of the
6 double-headed arrow in Figure 2, to suggest that the driver safety scores may
7 be transmitted from the insurance company to the server?

8 MR. TILLER: Well, I guess I would flip that question, Your
9 Honor, because --

10 JUDGE HOSKINS: I would appreciate if you tried to answer it
11 first.

12 MR. TILLER: Okay. Yeah. So, it is, what is the post-processing
13 slide?

14 SPEAKER: Thirty.

15 MR. TILLER: Thirty. Slide 33. Sorry, I had to ask my colleagues
16 who are sitting here in the room to point us to, no, it's not 33, it's 30. There
17 is this language of the motion data can be recorded even after a phone call or
18 text message ends, as shown in Figure 4. But in the post-processing stage,
19 the activity module can be used to determine the context of a phone call to a
20 selected user based on previously collected motion data and adjust the
21 related safety score. Here, it's in the post-processing stage. The post-
22 processing stage is if data is collected, not in real time, and not able to be
23 processed in real time. And that is specifically shown on slide 30, where it
24 talks about the risky behaviors as talking while driving or texting while
25 driving may not be identified in real time due to limited data. But the post-

1 processing technique can deliver high confidence estimation. So, this is
2 information going to the server or post-processing. That is what I think is
3 being referred to here, that data can be reported to the server because data is
4 being sent to the server for processing by the server. And again, Your
5 Honor, if I may, I think it is important to flip your question on its head,
6 which is it is the Petitioner's obligation. It is the Petitioner's burden to show
7 where this is happening. And the fact of the matter is we have shown, Patent
8 Owner has shown a place where it is indeed happening.

9 JUDGE HOSKINS: And that place is the server, right? You're
10 telling us it's the server?

11 MR. TILLER: It's happening at the server. Absolutely, it's
12 happening at the server. You can see it in Figure 2.

13 JUDGE HOSKINS: And can -- do you have any disclosure that it
14 might be happening in the insurance portion other than Figure 2?

15 MR. TILLER: Other than Figure 2? Other than Figure 1.

16 JUDGE HOSKINS: Figure one, thank you. Yes, other than the
17 double headed arrow in Figure 1. Thank you.

18 MR. TILLER: Figure two. Well, again, there is in Figure 2, and I
19 have to get, which is on slide 28 of our slide deck. And I'm trying to find a
20 larger picture of it because my eyes are so bad, Your Honor.

21 JUDGE HOSKINS: I understand that one of your arguments is it
22 can be done by the server, which I think is what Figure 2 is helping with.

23 MR. TILLER: I can also show in Figure 2 there's 216, module
24 216, which is data sharing interface for a third party. So, it might not just be
25 the insurance company. There may be other parties here that is sharing data

1 for whatever purpose may be going on. But again, we have expressed
2 disclosures in Figures 1 and 2, whereas what we have from Petitioner is
3 guesswork. And again, Your Honor, I do want to bring back to the point
4 that I made at the very beginning of the arguments, which is it is important
5 to note, consistent with the claims, that there must be the determination of
6 the start of the driving period. We barely discussed that today. But yet there
7 is no -- the fact that a phone call comes in and that there is then a period of
8 time that is untethered from driving has nothing to do with whether the
9 vehicle is driving or not, where information is being recorded or the
10 monitoring period that Petitioner notes. That claim element is not shown
11 disclosed, taught, or even suggested anywhere in Curry.

12 So, with that, unless Your Honors have any further questions,
13 Patent Owner rests.

14 JUDGE IPPOLITO: I see no questions from my colleagues and I
15 have no additional questions. Thank you all for appearing today and for
16 answering our many questions. We will take this case under advisement and
17 issue our decision in due course. With that, we are adjourned.

18 (Whereupon the above-entitled matter went off the record at 3:12
19 p.m.)

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Patent 10,192,369 B2

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